IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17534 of 2006
Date of decision 7 .11.2006

Kalam Singh .. petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.RN Sharma, Advocate for the petitioner

M.M.Kumar, J.

The petitioner has been working on the post of Conductor with the Haryana Roadways, Jind. He has prayed that the order dated 25.5.2004 (Annexure P.8) passed by the Disciplinary Authority i.e. General Manager, Haryana Roadways, Jind dismissing him from service be quashed. The afore-mentioned order was upheld by the appellate authority but the punishment of dismissal was reduced by giving him last opportunity and reducing him at the minimum of pay scale for a period of five years. The petitioner was also not to be paid any financial benefits for the period spent by him under suspension or for the period spent out of service. However, that period was to be counted for all other benefits.

Brief facts of the case are that the petitioner was appointed as a Conductor with the Haryana Roadways. It is claimed that he has been awarded commendation certificate and appreciation certifies issued by the Deputy Commissioner, Jind (annexures P.1 and P.2). On 21.11.2002 (Annexure P.3) a charge sheet was issued to him contemplating infliction of major penalty under Rule 7 of the Haryana Civil Services (Punishment and Appeal Rules, 1987 (for brevity 'the 1987 Rules'). The petitioner was

charged with the allegation of mis-appropriation of an amount of Rs. 468/-. He submitted his reply to the charge sheet on 16.12.2002 (Annexure P.4) The reply was found unsatisfactory and the Accounts officer, Haryana Road Transport, Jind was appointed as an Inquiry Officer. The Inquiry Officer submitted his report on 25.6.2003 (Annexure P.5) holding that the charges against the petitioner were not proved. However, the General Manager on the perusal of the case file found that the inquiry officer failed to consider certain issues and recorded his dis-agreement with the report of the inquiry officer. The note of dis-agreement as recorded by the General Manager on five issues reads as under:

> " 1. The inspection was carried out under the supervision of Shri Sultan Singh, Traffic Manager, Kaithal. Inquiry from him was also required to be made.
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> 2. Copy of Rs.9/- has been shown sold and thereafter number 53 has been closed. First digits of the tickets of this copy have not been shown and uptill now which have been closed, there is difference in their hand writing and figure of 53. If the numbers would have been closed by the Inspectors and you had closed number and number 53 was closed there would have also written first digit of the copy.
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> 3. Police case or checking of cash is made under the circumstances when the Conductor do not admit his fault and he refuses to give unpunch tickets.
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> 4. Combination of tickets from Karnal to Assandh is required to be made of Rs. 15/- + 3/- and not for Rs. 9/- + 9/- which have been produced by the witness, the same have been issued by

the Conductor, from the new copy, after report was made against him as the Conductor did not give the same from the copy of Rs. 15/- + 3/- as the Inspector has taken unpunched tickets of Rs. 15/- + 3/- from him. Had the Conductor given the tickets of this combination, then the same would have been after the tickets attached with the report.

5. In the affidavit, the witness have stated that he came down from the bus for urine and in the meanwhile, the bus started and that he was left at the same place, this fact is not true. Because the labourers who were there would have stopped the Bus, by giving call as they were not even aware, where they are to go. Bihari Labourers who come to harvest the paddy they are not accompanied with the children, to whom tickets are not issued.

So, not agreeing with the report of Inquiry Officer, I order for the issuance of show cause notice to Shri Kalam Singh C.125 for the termination of his services and the period spent after suspension restricted upto the extent of subsistence allowance."

Accordingly, a show cause notice was issued to the petitioner on 24.7.2003 (Annexure P.6) to which the petitioner sent his reply on 8.8.2003 (Annexure P.7). Eventually, the General Manager, passed an order on 25.5.2004 (Annexure P.8) and the operative part of the same reads as under:

" In this case the inspectors have taken unpunched tickets of Rs. 15/- + 3/- = Rs.18/- in accordance with these instructions.

> There was no difference of opinion in this case and there was no problem to the Conductor due to which he gave unpunched ticket to the Inspectors, on the spot. But in this case, the Conductor, with a view to deceive the department and to defend himself, by issuing tickets of Rs. 9 + 9 (by doubling) and punching the same subsequently, produced some other person as witness by enticing some other person. As has been pointed out by the Conductor in his reply to the charge sheet that on reaching at Assandh he stopped the vehicle and after 20 minutes a person came there with whom there were tickets as told by the Conductor. In inquiry, during question answer, Shri Lehna Singh, Inspector and Ram Kumar Dhiman, Sub Inspector told that there were 26 passengers travelling without tickets, separately. They were not all together. It also shows that the conductor has prepared the witness subsequently and the witness is false."

The afore-mentioned order of termination of his service has been modified in appeal by awarding the petitioner the punishment of bringing him at the minimum of pay scale for a period of five years. It has further been held that no financial benefits are to be given to the petitioner for the period spent under suspension or the period spent out of service. The operative part of the order dated 30.9.2004 (Annexure P.10) reads as under:

> " In this way, after careful perusal of all the circumstances, and the appeal of the appellant, I have come to the conclusion that the appellant is not just fully innocent in the matter, however, keeping in view his previous service record that during the

previous service, his record has been satisfactory, keeping a lenient view against him, I offer him last opportunity of service in the Transport Department and order to bring him, at the minimum of pay scale for a period of five years. No financial benefit will be given to the appellant for the period spent under suspension or the period spent out of service. But this period will be counted for all other benefits."

Mr. R.N.Sharma, learned counsel for the petitioner has argued that the Punishing Authority cum General Manager, Haryana Roadways, Jind has committed grave error in law by not handing over a copy of the inquiry report to the petitioner before recording the note of dissent on the five issues. According to the learned counsel it was mandatory for the Punishing Authority-cum-General Manager to supply to the petitioner a copy of the inquiry report and report of dissent before issuing a show cause notice expressing his opinion that the petitioner was guilty of the charges levelled against him. In support of his submission, he has placed reliance on para 29 of the judgement of Hon'ble the Supreme Court in the case of Managing Director ECIL v. B. Karunakar (1993)4 SCC 727 and a Division Bench judgement of this Court in the case of Ramesh Kumar v. State of Haryana 2006(4) RSJ 236. He has prayed that the impugned order passed by the appellate authority dated 30.9.2004(Annexure P.10) be set aside and the petitioner be reinstated in service with all consequential benefits.

After hearing learned counsel we are of the considered view that this petition lacks merit and is thus liable to be dismissed. The principles of natural justice which require the disciplinary authority to supply a copy of the inquiry report to the delinquent employee are based on

the rationale that a delinquent employee may have his point of view heard before the disciplinary/ punishing authority makes up its mind to agree with the findings recorded by the inquiry officer by holding the delinquent employee as guilty. It appears to us that the afore-mentioned principle has been laid down in para 29 of the judgement of Hon'ble the Supreme Court in the case of B. Karunakar (supra) so as to grant an opportunity to a delinquent employee to highlight as to how the inquiry officer was not correct on facts and law by appreciating the evidence in a particular manner. Such an opportunity was required to be given in cases where the inquiry officer has come to a conclusion to the prejudice of the delinquent employee. However, in cases where the inquiry officer has exonerated the delinquent employee then the only stage for furnishing of an inquiry report to the delinquent employee could be when the disciplinary/ punishing authority decides to dis-agree with the inquiry report. In such a case it would be mandatory for the disciplinary/ punishing authority to supply the inquiry report and the note of dissent which has been actually done in the present case. The afore-mentioned course is open to the disciplinary/ punishing authority by virtue of the provision made by Rule 7(6) of the 1987 Rules. Therefore, the principles laid down in para 27 of the judgement in B.Karunakar's case (supra) do not apply to the facts of the present case.

Even otherwise on our repeated queries, learned counsel for the petitioner has not been able to project as to how and in what manner the petitioner has been prejudiced because paragraph 31 in B. Karunakar's case (supra) also lay down that the compliance with the principles of natural justice is not a mere formality and some prejudice must be shown to have been caused. In a case of present nature we cannot presume any prejudice

caused because the dissenting note prepared by the disciplinary/ punishing authority has come into existence for the first time and the same was communicated to the petitioner alongwith the inquiry report submitted by the inquiry officer. It will be appropriate to make a reference to Rule 7(6) of the 1987 Rules which reads as under:

> " 7. Inquiry before imposition of certain penalties.-
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> 1 to 5 xx xx xx xx xx xx
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> 6. After the inquiry against a Government employee has been completed, and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the Government employee shall, if the penalty to be imposed is major penalty be supplied with a copy of the report of enquiring authority and be called upon to show cause, within reasonable time, not ordinarily exceeding one month against the particular penalty proposed to be inflicted upon him. Any representation submitted by him in this behalf shall be taken into consideration before final orders are passed:
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> Provided that if the punishing authority disagrees with any part or whole of the findings, of the enquiring authority, the point or points of such disagreement, together with a brief statement of the ground thereof, shall also be supplied to the Government employee." (emphasis added)

According to the proviso appended to the afore-mentioned rule if the punishing authority records its dis-agreement with any part or whole of the finding of the enquiry officer then the points of such dis-agreement

together with a brief statement thereof is required to be supplied to the delinquent employee.

The afore-mentioned rule has been religiously complied with and we have not been able to find any legal infirmity in the view taken by the disciplinary/ punishing authority. The appellate authority while exercising jurisdiction under Rule 9 of the Rules has reduced the punishment of termination from service to that of reducing the petitioner to the minimum of pay scale for a period of five years and also refused to pay any amount in respect of the suspension period or the period spent outside the service. The order dated 30.9.2004 passed by the appellate authority is also in accordance with Rule 9 of the Rules and does not warrant our interference.

We are of the considered view that in the present case there is adequate evidence pointed out by the disciplinary authority to which reference has already been made by us in the preceding paras. Hon'ble the Supreme Court in the case of State of Haryana v. Rattan Singh AIR 1977 SC 1512 has held that when the bus conductor of State Transport undertaking is charged for not collecting fare from certain passengers and his guilt having been established then the finding cannot be set aside merely because of his long service and young age. It has further been opined that the fact of non recording of statement of passengers who had not been issued vouchers by the Conductor would not constitute a basis for holding that the findings were without any evidence. The statement of the Inspector although indirect oral evidence was considered sufficient. If such is the position of law as laid down in Rattan Singh's case (supra)then in the present case there is an over-whelming evidence to sustain the finding. The

disciplinary/ punishing authority has rightly made a reference to the defects committed by the inquiry officer for not making any inquiry from the Traffic Manager, Sultan Singh under whose supervision the inspection was carried. The combination of voucher from Karnal to Assandh was required to be in the denomination of Rs.15/- + Rs.3/- and not for Rs. 9/- + Rs.9/- which were produced by the witnesses. Those tickets are found to be issued by the petitioner from the new voucher book after a report has been made against him. The Inspector has recovered un-punched tickets of Rs. 15/- and Rs. 3/- from the petitioner. Therefore, it cannot be said that it is a case of no evidence. The findings are supported by evidence on all the issue and does not call for interference by this Court.

For the reasons afore-mentioned this petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

7.11.2006
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